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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 134

JOHN THOMAS CARTER AND EUGENE PEARSON MACEMORE,

Appellants,

vs.

THE COMMONWEALTH OF VIRGINIA,

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA.

STATEMENT AS TO JURISDICTION.

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INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Basis upon which it is contended the Supreme Court has jurisdiction	1
Statutory provision believed to sustain jurisdiction	2
Statute of the State, the validity of which is involved	2
Date of judgment or decree	5
Nature of the case and rulings of the Court bringing the case within jurisdictional provision relied upon	5
Grounds upon which it is contended the questions involved are substantial	7
Stage of proceedings and manner in which Federal questions were raised	8
Manner in which question involved was passed upon by the Court	10
Cases believed to sustain jurisdiction	12
Exhibit "A"—Opinion of the Supreme Court of Appeals of Virginia in the instant case	13
Exhibit "B"—Opinion of the Supreme Court of Appeals of Virginia in the case of *Dickerson, et als.* v. *Commonwealth*	18

Table of Cases Cited.

Duckworth v. *State of Arkansas*, 314 U. S. 390, 62 Sup. Ct. Rep. 311	7
James Stewart & Co. v. *Sadrakula*, 309 U. S. 94, 60 Sup. Ct. 431, 84 L. Ed. 596	12
Western Turf Assn. v. *Greenburg*, 204 U. S. 359, 27 Sup. Ct. 384, 51 L. Ed. 520	12

STATUTES CITED.

	Page
Constitution of the United States, Article I, Section 8, Clause 3	7
Judicial Code, Section 237 (a) (28 U. S. C. A. 344a), as amended by the Act of January 31, 1928, 28 U. S. C. A. 861a and 861b (45 Stat. 54)	2
Michie's Virginia Code of 1942, Section 4675 (49a), Acts of 1936, p. 434)	2
Regulations of Virginia Alcoholic Beverage Control Board passed pursuant to the above Act, Order No. A-1, adopted August 30, 1940, Section 42	3
Section 44	4

9

SUPREME COURT OF THE UNITED STATES

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No. 134

JOHN THOMAS CARTER AND EUGENE PEARSON MACEMORE,

Appellants,

vs.

THE COMMONWEALTH OF VIRGINIA.

Appellee.

STATEMENT OF JURISDICTION.

Pursuant to the provisions of Rule No. 12 of the rules of the Supreme Court of the United States, the above named appellants file this, their statement, disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decree of affirmance appealed from herein as follows:

1.

Basis Upon Which It Is Contended the Supreme Court Has Jurisdiction.

The Supreme Court of Appeals of Virginia, which is the highest court of said State in which a decision in this suit could be had, has sustained the validity of a statute of

Virginia together with certain regulations having the force and effect of law promulgated by the Virginia Alcoholic Beverage Control Board pursuant to the provisions of the statute, against the contention that said statute and regulations are repugnant to and in conflict with Article I, Section 8, Clause 3 of the Constitution of the United States.

2.

Statutory Provision Believed to Sustain Jurisdiction.

The statutory provision believed to sustain the appellate jurisdiction is Section 237 (a) of the Judicial Code; 28 U. S. C. A. 344 (a); the Act of January 31, 1928, 28 U. S. C. A. 861 (a) 861 (b), 45 Stat. 54.

3.

The Statute of the State, the Validity of Which Is Involved.

The statute of Virginia (Section 49a of the Virginia Alcoholic Beverage Control Act, Acts of 1936, p. 434, Michie's Virginia Code of 1942, Section 4675 (49a), the validity of which is attacked by the appellants is as follows:

> "Section 4675 (49a). *Transportation; Transportation permits; penalties.*—The transportation of alcoholic beverages, other than wine and beer, purchased from persons licensed to sell same in this State, and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this act, within, into or through the State of Virginia, in quantities in excess of one gallon is prohibited except in accordance with regulations adopted by the Virginia Alcoholic Beverage Control Board pursuant to this section.
>
> "The board may adopt such regulations governing the transportation of alcoholic beverages, other than wine and beer purchased from persons licensed to sell

same in this State and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this act within, into or through Virginia in quantities in excess of one gallon, as it may deem necessary to confine such transportation to legitimate purposes and may issue transportation permits in accordance with such regulations.

"Any person who shall transport alcoholic beverages other than wine and beer purchased from persons licensed to sell the same in this State and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this act, in excess of one gallon, in violation of such regulations shall be guilty of a misdemeanor and punished as provided in section 4675 (62) (1936, p. 434.)"

The Regulations of the Virginia Alcoholic Beverage Control Board promulgated pursuant to the provisions of the foregoing statute (Order No. A-1 of the Virginia Alcoholic Beverage Control Board adopted August. 30, 1940), the validity of which was also attacked by the appellants, are as follows:

"Section 42. The transportation of Alcoholic Beverages as Defined in the Virginia Alcoholic Beverage Control Act, As Amended, Within, Into, or Through the State of Virginia in Quantities in Excess of One Gallon.

"Before any person shall transport any alcoholic beverages within, into or through the State of Virginia, such person shall post with the Virginia Alcoholic Beverage Control Board a bond with approved surety, payable to the Commonwealth of Virginia, in the penalty of One Thousand Dollars, upon condition that such person will not unlawfully transport and/or deliver any alcoholic beverages within, into, or through the State of Virginia, and evidence that the required bond has been posted shall accompany the alcoholic beverages at all times during transportation.

"Provided, however, that no such bond shall be required of any person licensed under the Virginia Alcoholic Beverage Control Act, as amended, to sell alcoholic beverages when such alcoholic beverages are being transported in a vehicle belonging to the licensee.

"Provided further that no such bond shall be required of any person transporting wine and/or beer purchased from persons licensed under the provisions of the Virginia Alcoholic Beverage Control Act, as amended, or those alcoholic beverages which may be manufactured and sold without any license under the Virginia Alcoholic Beverage Control Act as amended."

"Section 44. Where alcoholic beverages are desired to be transported within, into, or through the State of Virginia (except those instances mentioned in Sections 42 and 43 of these Regulations), such transportation shall be engaged in only when in accordance with the provisions of these regulations:

"(a) There shall accompany such alcoholic beverages at all times during transportation, a bill of lading or other memorandum of shipment, signed by the consignor showing an exact description of the alcoholic beverages being transported, the name and address of the consignor; the name and address of the consignee; the route to be traveled by such vehicle while in Virginia and such route must be the most direct route from the consignor's place of business to the place of business of the consignee.

"(b) Vehicles transporting alcoholic beverages shall not vary from the route specified in the bill of lading or other memorandum of shipment.

"(c) The name of the consignor on any such bill of lading or other memorandum of shipment shall be the name of the true consignor of the alcoholic beverages being transported, and such consignor shall only be a person who has a legal right to make such shipment. The name of the consignee on any such bill of lading or other memorandum of shipment shall be the

name of the true consignee of the alcoholic beverages being transported and who has previously authorized in writing the shipment of the alcoholic beverages being transported and who has a legal right to receive such alcoholic beverages at the point of destination shown on the bill of lading or other memorandum of shipment."

4.

Date of Judgment or Decree.

The date of the decree sought to be reviewed herein is March 8, 1943, and the date upon which the application for appeal is presented is May 25, 1943.

5.

Nature of the Case and Rulings of the Court Bringing the Case Within Jurisdictional Provisions Relied Upon.

Under the uncontroverted facts in the case the appellants were in the act of transporting by motor truck a shipment consisting of fifty-six cases of whiskey from Dorsey, Maryland, to Thomasville, North Carolina. They were apprehended in Rappahannock County, Virginia, while in the act of transporting the shipment through Virginia. The appellants had with them a bill of lading showing the consignor to be a lawful one, but the shipment was consigned to a person in Thomasville, North Carolina, where, under the laws of North Carolina, the consignee could not lawfully receive the whiskey. The bill of lading contained no routing for the shipment through Virginia. Accompanying the shipment and posted in the cab of the truck was evidence that the owner of the truck, Healton Miller, had posted bond in accordance with the provisions of Section 42 of the Regulations here in question, but this bond had previously been canceled by the Virginia Alcoholic Beverage Control

Board and Miller had been notified thereof. The ground for canceling the bond was that the members of the Board had "information" that Miller had a reputation of being a bootlegger in North Carolina. There was no rumor that he had ever violated the laws of Virginia. It is admitted that the appellants had no intention of diverting the shipment to any channels in Virginia, or that they had violated or intended to violated any of the laws of Virginia other than the Statute and Regulations involved in this case. The uncontroverted facts are that the shipment was destined to North Carolina and, if appellants had not been apprehended the shipment would have passed through Virginia without diversion.

The challenged statute prohibits the transportation of whiskey through Virginia in quantities in excess of one gallon, except in accordance with regulations adopted by the Virginia Alocholic Beverage Control Board, and declared a violation thereof to be a misdemeanor.

Pursuant to the provisions of the statute the Board promulgated the following regulations which the appellants were charged with violating: (1) The person transporting whiskey shall post with the Board a bond with approved surety in the penalty of One Thousand Dollars, "upon condition that such person will not unlawfully transport and/or deliver any alcoholic beverages within, into or through the State of Virginia." Evidence that the bond has been posted shall accompany each shipment. (2) There shall accompany each shipment a bill of lading disclosing the route to be traveled while in Virginia, and such route shall be the shortest one from the consignor's place of business to the place of business of the consignee. (3) The consignee must have a legal right to receive the shipment at its destination as shown on the bill of lading.

It is conceded that the shipment in this case was what is

commonly called "through" interstate commerce. There was no intention to divert any of the whiskey into Virginia nor any intention to violate any of the laws of Virginia. The Supreme Court of Appeals of Virginia had before it the question as to whether the Virginia statute and the regulations promulgated pursuant thereto constituted an undue burden upon, or a regulation of interstate commerce by the Commonwealth of Virginia which is prohibited by Article I, Section 8, paragraph 3 of the Constitution of the United States.

In its opinion the Supreme Court of Appeals of Virginia held the challenged statute and said regulations valid as against the contention that when applied to the shipment here involved they were repugnant to and in conflict with said Article of the Constitution of the United States and affirmed the judgment of the trial court imposing a fine of Fifty Dollars and costs upon each of the appellants.

6.

Grounds Upon Which It Is Contended the Questions Involved Are Substantial.

The appellants here have been charged solely with the violation of the laws of Virginia with respect to a shipment of whiskey in through interstate commerce. The statute and regulations in question govern all shipments of whiskey through the State of Virginia except those by public carriers. The question of the validity of the statute and regulations is substantial insofar as any interstate shipments are concerned.

The Supreme Court of the United States in the recent case of *Duckworth* v. *State of Arkansas*, 314 U. S. 390, 62 Sup. Ct. Rep. 311, decided December 15, 1941, upheld the validity of an Arkansas statute requiring a permit for transporters of whiskey through the State of Arkansas,

but the court specifically restricted its approval of regulatory measures to those which do not "interfere with the free flow of commerce across the States beyond what is reasonably necessary to protect the local public interest in preventing unlawful distribution or use of liquor *within the State*" (Italics supplied).

The statute and regulations of the Virginia Alcoholic Beverage Control Board which are attacked in this case are much more comprehensive and burdensome than the requirements of the permit under the Arkansas statute and do not fall within the rule pronounced by the court in the *Duckworth* case, *supra*.

The arbitrary cancellation of the bond of Healton Miller not only serves to illustrate the broad power of regulation of interstate shipments conferred on the Virginia Alcoholic Beverage Control Board by the statute in question, but also, in the opinion of the Supreme Court of Appeals of Virginia said statute and regulations should be construed to empower the Board in its discretion to *prohibit* interstate shipments of whiskey by the expedient of refusing to approve a bond or by canceling such bond after it had been posted.

In declaring the said statute and regulations constitutional the Supreme Court of Appeals of Virginia has attempted to broaden the powers of the State to include the regulation of interstate shipments of whiskey which regulation results in an undue burden upon interstate commerce, and thus a substantial question is involved in the instant case.

7.

Stage of Proceedings and Manner in Which Federal Questions Were Raised.

The Federal questions involved in this case were first raised orally upon the trial of the appellant before the Trial Justice of Rappahannock County, Virginia. This is

not a court of record and under the law of Virginia any decision of this Court in a criminal case is appealable to the Circuit Court of Rappahannock County, Virginia, as a matter of right, where the case is heard *de novo*.

The Federal questions were again raised upon the trial of the case in the Circuit Court of Rappahannock County, Virginia, upon an oral motion to strike out all of the evidence submitted by the Commonwealth and to dismiss the warrant upon the following grounds, among others, assigned in writing (R. 36):

> "4. That said Act and said regulations are unconstitutional in that they violate Article I, Section 8, clause 3 of the Constitution of the United States (by) regulating commerce between two States and/or imposing a burden upon interstate commerce.
>
> "5. That the cancellation of the bond of Healton Miller on May 1, 1942, by the said Board was unlawful and violative of the defendants' rights under the provisions of Article I, Section 8, Clause 3, of the Constitution of the United States."

After the judgment of the Circuit Court of Rappahannock County, Virginia, finding the appellants guilty as charged, the Federal questions were again raised upon an oral motion in open court for a new trial, upon the same grounds stated in writing as those assigned in the said motion to strike out all of the evidence of the Commonwealth (R. 37).

The Federal questions were again raised in the petition of the appellants for a writ of error and in their briefs filed in the Supreme Court of Appeals of Virginia. In the appellants' petition for a writ of error was contained a statement of their assignments of error wherein were set forth the following (R. 4):

> "3. That said Act and said Regulations are unconstitutional in that they violate Article I, Section 8,

Clause 3 of the Constitution of the United States (by) regulating commerce between the States and/or imposing a burden upon interstate commerce.

"5. That the cancellation of the bond of Healton Miller on May 1, 1942, by the said Board was unlawful and violative of the defendants' rights under the provisions of Article I, Section 8, Clause 3 of the Constitution of the United States."

In each instance the trial court overruled the motion of the appellants and the Supreme Court of Appeals of Virginia, after granting the writ of error, affirmed the judgment of the lower court.

Under the practice in Virginia the petition for a writ of error forms a part of the record in the Supreme Court of Appeals. The petition was adopted as the opening brief of the appellants, and under Section III (R. 17, 18 and 19), and under Section V (R. 20) of the petition the Federal questions were raised and stated.

8.

Manner in Which Questions Involved Were Passed Upon by the Courts.

The Trial Justice of Rappahannock County, Virginia, overruled the motion of the appellants and entered judgment finding the appellants guilty of the charges set forth in the warrant (R. 26).

The Circuit Court of Rappahannock County, Virginia, overruled the motion of appellants to strike out all of the evidence and to dismiss the warrant and entered judgment against them finding them guilty of the charges set forth in the warrant (R. 31, 37).

The Circuit Court of Rappahannock County, Virginia,

also overruled the motion of the appellants for a new trial (R. 37) and entered final judgment against the appellants finding them guilty of the charges set forth in the warrant and fining them each the sum of Fifty Dollars and costs.

The Supreme Court of Appeals of Virginia sustained and affirmed the judgment of the court below, and held the questioned statute and the regulations promulgated pursuant thereto to be valid. In its opinion (p. 16[1]) the court held the regulations to be "reasonable aides in preventing the unlawful distribution and sale of alcoholic beverages in the State", quoting the *Duckworth* case, *supra*.

The Supreme Court of Appeals of Virginia further held that the Virginia Alcoholic Beverage Control Board had the right to cancel the bond of Healton Miller "with or without notice" (Opinion page 17[1]).

9.

Copy of Opinion on Rendition of Judgment.

A copy of the opinion of the Supreme Court of Appeals of Virginia designated Exhibit "A" is hereunto attached and appended. At the same time that the opinion in the instant case was rendered the Supreme Court of Appeals of Virginia rendered its opinion in a companion case involving some of the identical questions, under the style of *Earl Dickerson, W. O. Page and one 1939 Ford Truck* versus *Commonwealth of Virginia*, Record No. 2666. This case is referred to in the opinion rendered by the court in the instant case. For the convenience of the court we have hereunto attached and appended the opinion rendered in the *Dickerson* case, which we have entitled Exhibit "B".

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[1] (Pages of the opinion of the Supreme Court of Appeals of Virginia referred to above are the pages of this statement to which said opinion is appended).

10.

Cases Believed to Sustain Jurisdiction.

Western Turf Ass'n. v. *Greenberg*, 204 U. S. 359, 27 S. Ct. 384, 51 L. Ed. 520;

James Stewart & Co. v. *Sadrakula*, 309 U. S. 94, 60 S. Ct. 431, 84 L. Ed. 596.

Respectfully submitted.

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EXHIBIT "A".

Record No. 2668

Present: Campbell, C. J., Hudgins, Gregory, Browning, Eggleston and Spratley, JJ.

JOHN T. CARTER AND E. P. MACEMORE,

v.

COMMONWEALTH OF VIRGINIA.

Opinion by Justice C. Vernon Spratley, Richmond, Va., March 8, 1943.

From the Circuit Court of Rappahannock County; J. R. H. Alexander, Judge.

This is a companion case to *Earl Dickerson, W. O. Page, and one 1939 Ford Motor truck, etc.* v. *the Commonwealth of Virginia*, decided this day.

The evidence in the two cases is somewhat different, but the principal assignments of error are based upon the same grounds. This case, however, has certain additional assignments of error based upon the specific offenses alleged against the appellants.

John T. Carter and E. P. Macemore were on September 14, 1942, jointly convicted of unlawfully transporting whiskey within, into and through Virginia. The specific charges against them were that the bill of lading for their whiskey shipment showed that it was being transported to a person who did not have a legal right to receive it at the point of destination shown thereon, as required by section 44 of the regulations of the A. B. C. Board of Virginia; that the bill of lading did not specify the route to be travelled by their truck in Virginia, as required by section 42 of the regulations; and that the appellants had posted no bond.

The case was tried by the court without the intervention of a jury upon an agreed stipulation of facts. The facts may be briefly stated as follows:

On May 20, 1942, the appellants received from a wholesale liquor dealer in Dorsey, Maryland, a shipment of 168

gallons of whiskey consigned to R. M. Williard at Thomasville, North Carolina. The whiskey was loaded on a truck, and immediately driven into Virginia by the appellants. Carter and Macemore said they intended to transport it through Virginia into North Carolina. They were apprehended and arrested in Rappahannock County, Virginia. They produced a bill of lading showing the correct amount of whiskey contained in the shipment, and disclosing the consignee to be a resident of North Carolina. Under the laws of North Carolina, the consignee could not lawfully receive the whiskey at its destination. The bill of lading specified no route for the truck to follow while in Virginia.

The truck was registered in the name of Healton Miller, a resident of North Carolina, who had posted, on March 26, 1942, a bond as required by section 42 of the Regulations of the Virginia Alcoholic Beverage Control Board; but the Board had notified Miller on May 1, 1942, of the concellation of the bond and demanded the return of the certificate issued thereon. The bond had been cancelled upon information that Miller had the reputation of being a bootlegger in North Carolina. There was no evidence that Miller had ever violated the laws of Virginia.

Virginia Code, 1942, (Michie) section 4675 (5) and (49a) and section 44 of the Regulations of the Virginia Alcoholic Beverage Control Board have been set out in the companion case. Section 42 of the said regulations reads as follows:

"Section 42. The Transportation of Alcoholic Beverages as Defined in the Virginia Alcoholic Beverage Control Act, as Amended, Within, Into, or Through the State of Virginia in Quantities in Excess of One Gallon.

"Before any person shall transport any alcoholic beverages within, into, or through the State of Virginia, such person shall post with the Virginia Alcoholic Beverage Control Board a bond with approved surety, payable to the Commonwealth of Virginia, in the penalty of One Thousand Dollars, upon condition that such person will not unlawfully transport and/or deliver any alcoholic beverages within, into, or through the State of Virginia, and evidence that the

required bond has been posted shall accompany the alcoholic beverages at all times during transportation.

"Provided, however, that no such bond shall be required of any person licensed under the Virginia Alcoholic Beverage Control Act, as amended, to sell alcoholic beverages when such alcoholic beverages are being transported in a vehicle belonging to the licensee.

"Provided further that no such bond shall be required of any person transporting wine and/or beer purchased from persons licensed under the provisions of the Virginia Alcoholic Beverage Control Act, as amended, or those alcoholic beverages which may be manufactured and sold without any license under the Virginia Alcoholic Beverage Control Act, as amended."

It is here contended that the Virginia Alcoholic Beverage Control Act is unconstitutional, in that (1) the legislature did not have the power to delegate to the Alcoholic Beverage Control Board the right to adopt regulations having the force and effect of law; (2) that the Board did not have the authority to adopt sections 42 and 44 of its Regulations; (3) that the above sections are unconstitutional, in that they violate Article 1, section 8, clause 3 of the Constitution of the United States by imposing a burden upon interstate commerce; and (4) that the cancellation of the bond of Healton Miller was not a valid action under the power conferred upon the Board and was violative of the rights of the appellants under the commerce clause of the Federal Constitution.

What we have said in *Earl Dickerson, W. O. Page, and one 1939 Ford truck, etc.* v. *Commonwealth, supra,* applies and controls here upon similar questions raised by the appellants.

The bond required under section 42 of the regulations is for the purpose of insuring the fitness and integrity of the carrier of the liquor. It is evidence of his responsibility and a guaranty of lawful transportation. It confines the transportation to a channel deemed trustworthy.

The requirement that the bill of lading or other memorandum of shipment shall designate the route to be travelled

in Virginia enables agents of the Board and the State police to inspect the shipment in transit, to keep a watch over its movements, and to discourage and prevent its unlawful delivery or distribution within the State. It is but an incident of local regulation over a subject which, if left to unrestrained movement, has a tendency to affect the public safety and welfare.

Both requirements are reasonable aids in preventing the unlawful distribution and sale of alcoholic beverages in the State. They are consistent with the provisions and purpose of the Alcoholic Beverage Control Act to regulate and control the liquor traffic and hold it within confined limits. Neither requirement forbids or precludes the lawful transportation of ardent spirits in interstate commerce. Each tends to make regulation effective.

See *Ziffrin* v. *Reeves*, 308 U. S. 132, 84 L. Ed. 128, where a State statute limiting transportation to specified common carriers was upheld, and *Duckworth* v. *Arkansas*, 314 U. S. 389, 86 L. Ed. 294, 138 A. L. R. 1144, where a statute requiring a permit for transporting liquor was declared valid.

Miller, the only person who had the right to challenge the cancellation of his bond, is not a party to this proceeding. There is no evidence that he protested the action of the Board. It does not appear from the record what connection he had with the transportation of the whiskey, nor whether Carter and Macemore were his agents. We are not told whether the latter were using the truck with or without Miller's knowledge, or what action, if any, he may have taken to protest his property rights in the truck.

The bond is conditioned that the carrier will not engage in the unlawful transportation of alcoholic spirits within, into or through the State of Virginia. Evidence of its posting with the Board constituted a permit,—a permit to lawfully transport. Cancelled or uncancelled, it gives no one a permit for unlawful transportation.

Whether or not the appellants might have given an acceptable bond for interstate transportation through Virginia is not an issue here. If such a bond had been given,

it would have permitted lawful transportation; but it would have afforded no defense to an unlawful carriage.

The requirement for the posting of a bond is a regulation of a police nature. The Board having the authority to require the bond, under the police powers conferred upon it by the A. B. C. Act, had the right to cancel it with or without notice under the same power if, in the exercise of a reasonable discretion, it was satisfied that it was being used or about to be used against the public safety and welfare.

It is not to be presumed that the authority of the Board will be arbitrarily used; but in the event that it is abused, a person feeling himself aggrieved may seek judicial relief in the courts.

In support of their contention that the regulations of the Board impose a burden upon interstate commerce, the appellants cite the recent case of *Barnett* v. *State*, Ala., 9 So. (2d) 267. The Alabama court did not have before it for decision statutes or regulations involving the questions here raised. In that case, it was held that the Twenty-first Amendment to the Federal Constitution did not authorize the seizure and condemnation of liquors and transporting vehicles under existing Alabama statutes, where such liquors were being transported through Alabama to another State for disposition in violation of the laws of the latter State. In the case before us the prosecution of the appellants is based upon specific statutes of Virginia.

The judgment of the trial court is affirmed.

Affirmed.

EXHIBIT "B".

Present: Campbell, C. J., Hudgins, Gregory, Browning, Eggleston and Spratley, JJ.

Record No. 2666.

EARL DICKERSON, W. O. PAGE and ONE 1939 FORD TRUCK, MOTOR No. 99T28531,

v.

COMMONWEALTH OF VIRGINIA.

OPINION BY JUSTICE C. VERNON SPRATLEY, Richmond, Va., March 8, 1943.

From the Circuit Court of Prince William County; Walter T. McCarthy, Judge.

This case comes before us upon a writ of error granted to a judgment and two orders entered on June 10, 1942, in the Circuit Court of Prince William County, Virginia. The judgment found Earl Dickerson guilty of transporting intoxicating liquor in excess of one gallon within, into and through the State of Virginia, to a consignee in the State of North Carolina, who could not lawfully receive such liquor. One of the orders condemned and ordered to be sold the Ford truck transporting the liquor, and the other order confiscated and forfeited to the Commonwealth 762 gallons of alcoholic beverages loaded on the truck. The three cases were consolidated for trial by and with the consent of the parties, and heard by the court without the intervention of a jury.

The facts, identical in the three cases and presented in a written stipulation, may be briefly stated as follows:

On May 5, 1942, in the County of Prince William, Virginia, Earl Dickerson was found driving a 1939 Ford truck, Motor No. 99T28531. The truck was loaded with 762 gallons of whiskey, and was being driven by Dickerson along U. S. Route No. 1, in the direction of North Carolina, when it was seized by a police officer of this State.

At the time of his arrest, Dickerson did not present to the police officer any evidence that he or any other person had filed with the Virginia Alcoholic Beverage Control Board any bond covering the transportation of the alcoholic beverages within, into or through the State of Virginia. He had a bill of lading or memorandum of shipment showing that the liquor had been purchased from a *bona fide* wholesale whiskey dealer at Dorsey, Maryland, and that it was consigned to William O. Page, trading as Page Trading Company, Garland, North Carolina. The bill of lading did not designate any route to be travelled while in Virginia.

Upon his trial, Dickerson produced evidence of a transportation bond posted with the Board by William O. Page of Wilson, North Carolina, as a carrier. William O. Page is the same person as W. O. Page, the appellant here.

Both Page and Dickerson were residents of the State of North Carolina, and the Ford truck, which was owned by Page, was duly licensed in that State.

The alcoholic beverages were being transported to North Carolina along U. S. Route No. 1, the most direct route, between Dorsey, Maryland, and Garland, North Carolina. Page was not a lawful consignee under the laws of North Carolina. The laws of that State do not permit the transportation by one person of more than one gallon of alcoholic spirits within its borders or its sale by individuals.

The prosecution was conducted under section 44 (c) of the Regulations of the Virginia Alcoholic Beverage Control Board, hereinafter sometimes referred to as the A. B. C. Board.

Appellants seek a reversal of the judgment and orders upon the following grounds: (1) That the legislature of Virginia had no authority to delegate to the Virginia Alcoholic Beverage Control Board the power to adopt regulations governing the transportation of alcoholic beverages within, into and through Virginia; (2) That the regulations of the Board "have no extra-territorial effect and are null and void insofar as a non-resident is concerned;" and (3) that the regulations dealing with the transportation of alcoholic beverages through the State of Virginia constituted a burden upon interstate commerce.

The whole of section 44 of the Regulations of the A. B. C. Board reads as follows:

"Where alcoholic beverages are desired to be transported within, into, or through the State of Virginia (except those instances mentioned in Sections 42 and 43 of these Regulations), such transportation shall be engaged in only when in accordance with the provisions of these regulations:

"(a) There shall accompany such alcoholic beverages at all times during transportation, a bill of lading or other memorandum of shipment signed by the consignor showing an exact description of the alcoholic beverages being transported; the name and address of the consignor; the name and address of the consignee; the route to be traveled by such vehicle while in Virginia and such route must be the most direct route from the consignor's place of business to the place of business of the consignee.

"(b) Vehicles transporting alcoholic beverages shall not vary from the route specified in the bill of lading or other memorandum of shipment.

"(c) The name of the consignor on any such bill of lading or other memorandum of shipment shall be the name of the true consignor of the alcoholic beverages being transported and such consignor shall only be a person who has a legal right to make such shipment. The name of the consignee on any such bill of lading or memorandum of shipment shall be the name of the true consignee of the alcoholic beverages being transported and who has previously authorized in writing the shipment of the alcoholic beverages being transported and who has a legal right to receive such alcoholic beverages at the point of destination shown on th bill of lading or other memorandum of shipment."

The Alcoholic Beverage Control Act of Virginia, Virginia Code, 1942 (Michie) chapter 184A, section 4675, subsections (1) to (69a), (Acts of Assembly, 1934, page 100, *et seq.*), created as a department of the Commonwealth of Virginia. The Department of Alcoholic Beverage Control. The department, designated as the Virginia Alcoholic Beverage Control Board, consists of a board of three members, and

the officers, agents and employees of the Board, (section 4675 (3)), with functions, duties, and powers authorized and prescribed by the Act.

The purpose of the A. B. C. Act, as set out in its title is "to legalize, regulate and control the manufacture, bottling, sale, distribution, transportation, handling, advertising, possession, dispensing, drinking and use of alcohol, brandy, rum, whiskey * * * and all liquids, beverages and articles containing alcohol obtained by distillation, fermentation or otherwise * * *; to provide for the confiscation and disposition of articles declared contraband hereunder * * *; to impose penalties for violations of the act * * *" Acts of Assembly, 1934, chapter 94, page 100, *et seq.*

The pertinent sections of the Act dealing with the subject before us are:

Code Section 4675 (5). "Power to make regulations; how published; effect thereof.—(a) The board may from time to time make such reasonable regulations, not inconsistent with this act, nor the general laws of the State, as the board shall deem necessary to carry out the purposes and provisions of this act and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages, or any one or more of such illegal acts, and from time to time alter, repeal, or amend such regulations or any of them. Such regulations shall be published * * *, and upon being so published shall have the force and effect of law. * * *"

Code Section 4675 (49a). "Transportation, transportation permits; penalties.—The transportation of alcoholic beverages, other than wine and beer purchased from persons licensed to sell same in this State, and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this act, within, into or through the State of Virginia in quantities in excess of one gallon is prohibited except in accordance with regulations adopted by the Virginia Alcoholic Beverage Control Board pursuant to this section.

"The Board may adopt such regulations governing the transportation of alcoholic beverages, other than wine and beer purchased from persons licensed to sell same in this

State and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this act, within, into or through Virginia in quantities in excess of one gallon as it may deem necessary to confine such transportation to legitimate purposes and may issue transportation permits in accordance with such regulations.

"Any person who shall transport alcoholic beverages, other than wine and beer purchased from persons licensed to sell the same in this State and those alcoholic beverages which may be manufactured and sold without any license under the provisions of this act, in excess of one gallon, in violation of such regulations shall be guilty of a misdemeanor and punished as provided in section 4675 (62)." (1936 p. 434.)

The regulation and control of liquor traffic—the manufacture, sale, and transportation of alcoholic beverages—has long been a difficult problem. Because of the recognized evils attendant upon the traffic it has been held to be subject to the police power of the State, in the interest of the safety, health, and well-being of the local communities. The act of 1934 was most carefully, skillfully and comprehensively drawn, with purposes definitely set out to rigidly control and regulate the liquor traffic in all of its phases.

Section 4675 (5) expressly empowers the A. B. C. Board to make, from time to time, such reasonable regulations as the Board may deem necessary to carry out the purposes and provisions of the Act, and to prevent the illegal manufacture, sale, possession, use, transportation, etc., of alcoholic beverages.

Section 4675 (49a) enacted in 1936, as an amendment to the original Act, expressly prohibits the transportation of alcoholic beverages, in excess of one gallon, other than wine and beer purchased from persons licensed to sell the same in this State, within, into or through this State, except in accordance with the regulations adopted by the A. B. C. Board. It further expressly authorizes and empowers the Board to adopt such regulations governing the transportation of such beverages in excess of one gallon within, into or through Virginia, "as it may deem neces-

sary to confine such transportation to legitimate purposes," and "to issue transportation permits in accordance with such regulations." It provides that a person violating such regulations shall be guilty of a misdemeanor, and punished as provided by section 4675 (62).

Thus may be clearly seen in the title to the Act, in the provisions of the above sections of the Act, and in many of its other provisions, the definite policy of the legislature to control and regulate the liquor traffic within the standards prescribed by the Act. A machinery of control was created and supplied with authority for efficient operation.

The Board is limited to the making of reasonable regulations to carry out the purposes and provisions of the Act, provided they are not in conflict with the Act or the general laws of the State. This is the definite standard and intelligible principle to which the Board must conform. This standard confines transportation to legitimate purposes. It does not interfere with legitimate transportation in accordance with reasonable regulations.

There is nothing indefinite about the adjective "legitimate." In its usual and common acceptance, as defined in Webster's New International Dictionary, Second Edition, Unabridged, it means "accordant with law or with established legal forms and requirements" or "lawful". In this case, its meaning is so clear that it is conceded that W. O. Page, consignee of the liquor in question, is an unlawful consignee. A transportation to an unlawful consignee is a transportation not in "accordant with law" or for a "lawful" purpose.

Much has been said and written with reference to the cardinal principle of our fundamental law that a legislature ought not and cannot delegate its power to make laws to any other department or body. The line of demarcation between legislative functions, which must be exercised by the legislature itself, and those functions of an administrative or executive nature which may be delegated to a board or an officer, is not always clear. The question has been considered by many courts in this country, State and Federal, including this court.

In the complex civilization under which we live, if the legislature were compelled to make provisions for all the minutiae of regulation of industry, economics, and human conduct, it would be deprived of much of the power of effective legislation to protect the safety, general welfare, and morals of the public.

The delegation of power to make administrative rules and regulations for the purpose of carrying out the policy of the law making body within the standard set by it, is exemplified in the grants to municipal and local bodies, to public service commissions, to health and sanitary boards, to commissions charged with the duty of carrying out statutes designed to control diseases of stock, trees, and crops, to building and zoning commissions, to commissions supervising the production and sale of milk, and many other boards and agencies charged with the duty of prompting the public welfare.

The legislature is not continuously in session. It cannot exercise direct or immediate supervision over State agencies. It must act, if it acts at all, in many cases through its agents or agencies to make its legislation effective. It cannot perform its more important duties if it has to pass on the fitness of a particular individual to have a license to sell wine or beer, or to receive or transport whiskey or gin. In many matters, it must confine itself to the making of policies and the fixing of standards under which its agents or agencies may operate. To deny the right of these agencies to function effectively would set at naught the express purpose of the legislation.

See an exhaustive annotation on the "Permissible Limits of Delegation of Legislative Power", 293 U. S. 448, 79 L. Ed. 474.

Mr. Justice Holt, in *Southern Railway Company* v. *Commonwealth*, 159 Va. 779, 167 S. E. 568, reviewed and discussed leading cases dealing with this subject. We there subscribed to the rule that there may be a valid delegation of legislative power to an agent to determine facts and things upon which action under a statute depends, where a

statute sufficiently indicates the legislative purpose and merely leaves administrative details to an agent.[2]

In Taylor *v.* Smith, 140 Va. 217, 124 S. E. 259, Judge Burks, in discussing the delegation of power to make regulations, quoted with approval the following from Block *v.* Chicago, 239 Ill., 251, 87 N. E. 1011, 130 Am. St. Rep. 219:

"It is true that a legislative body cannot divest itself of its proper function to determine what the law shall be, but it may authorize others to do those things which it might properly, but cannot understandingly or advantageously do. That rule was stated as long ago as the case of People *v.* Reynolds, 5 Gilm. 1, where it was said that without that power legislation would become oppressive and yet imbecile, and that local laws, almost universally, call into action to a greater or less extent the agency and discretion either of the people or individuals to accomplish in detail what is authorized or required in general terms. Government could not be carried on if nothing could be left to the judgment and discretion of administrative officers, and the doctrine of that case has been steadily adhered to ever since."

In Thompson *v.* Smith, 155 Va. 367, 154 S. E. 579, it was said:

"Mere matters of detail within the policy, and the legal principles and standards established by the statute or ordinance, may properly be left to administrative discretion, for the determination of such matters of detail is more essentially ministerial than legislative. In declaring the policy of the law and fixing the legal principles and standards which are to control in the administration of the law, general terms, which get precision from the technical knowledge or sense and experience of men and thereby become reasonably certain, may be used; and an administrative officer or bureau may be invested with the power to

[2] The Supreme Court of the United States reversed our judgment in this case. 290 U. S. 190, 78 L. Ed. 260. The Majority of that Court held that the statute involved was not merely a police regulation and that it was violative of the due process clause of the Federal Constitution.

ascertain and determine whether the qualifications, facts or conditions comprehended in and required by such general terms exist, and whether the provisions of the law so fixed and declared have been complied with in accordance with the generally accepted meaning of the words."

In the case of *Assaid* v. *Roanoke*, 179 Va. 47, 18 S. E. (2d) 287, a delegation of authority to a ministerial officer, without declaring the policy of the law which was to control the officer in exercising his opinion, was declared invalid.

The appellants rely upon *Panama Refining Company* v. *Ryan*, 293 U. S. 388, 79 L. Ed. 446 and *Schecter Poultry Corporation* v. *United States*, 295 U. S. 495, 79 L. Ed. 1570. In each case, the regulations of administrative boards were declared invalid as being enacted in pursuance of an unlawful delegation of legislative power, in that the delegation of power contained no definition of the conditions and circumstances under which the acts sought to be regulated were to be allowed or prohibited, that is, failed to set up definite standards to be followed by such boards in the execution of their duties. The opinions in these cases review and illustrate the principle of law involved and exemplify its application to the peculiar circumstances reviewed. The facts in those cases distinguish them from the case here.

Code, section 4675 (5) and (49a) and section 44 of the regulations of the A. B. C. Board are intended to protect citizens of Virginia from the illicit delivery, sale, and transportation of ardent spirits. We cannot escape the conclusion that one who deliberately and intentionally violates the Federal Constitution and the law of his resident State, in the unlawful transportation of liquor would hardly hesitate to violate the laws of this State while passing through it if he thought he might profit thereby. We cannot shut our eyes to the possibilities of such a situation and the necessity of prevention. The provisions of the statute and the regulations of the Board in accordance therewith are reasonably designed to avoid the threatened evil. They afford no complaint to one engaged in a lawful enterprise.

Section 44 (e) has no extra-territoriality, and we do not understand that the Commonwealth contends it has. The law of North Carolina is not in question here. The appellants are not charged with, or being tried for, violating the law of North Carolina. Page, the consignee, is not personally a defendant. He has intervened in the case only as a claimant of the condemned truck and confiscated liquor. Dickerson is charged with transporting liquor to an unlawful consignee,—a transportation not for a legitimate purpose, in violation of the laws of Virginia. The issue hinges upon his guilt or innocence of that specific offense.

But, say the appellants, Virginia, under its police power, can only legislate with respect to a resident consignee and the regulation was intended to apply only where the unlawful consignee resided in Virginia. This contention overlooks the language of our statute, the language of the regulation, and the effect of the Twenty-first Amendment to the Federal Constitution. The statute authorizes the Board to confine all transportation of liquor within, into or through Virginia to legitimate purposes. The regulation confines its transportation to one who has a legal right to receive the shipment at its stated point of destination, that is, to a lawful consignee.

Whether or not North Carolina had a law forbidding the receipt of the shipment by the consignee was a question of fact,—not a question of law. The provisions of that law were not in dispute. Its existence or reality only was involved. None of its provisions here required construction or interpretation.

The Twenty-first Amendment of the Federal Constitution, the supreme law of the land, provides as follows:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Under both the Federal Constitution and the laws of Virginia, the transportation of the liquor through Virginia was for an unlawful purpose. The liquor was contraband,

—a contraband subject to immediate seizure under the laws of Virginia. Virginia Code, 1942, (Michie) section 4675 (36). Its carrier was a violator of those laws.

The next question is *whether section 44 (c) of the regulations of the A. B. C. Board constitutes a burden upon interstate commerce.* The appellants rely upon Martin *v.* Commonwealth, 126 Va. 715, 100 S. E. 836; Williams *v.* Commonwealth, 169 Va. 857, 192 S. E. 795; and Surles *v.* Commonwealth, 172 Va. 573, 200 S. E. 636, for an affirmative answer.

Martin *v.* Commonwealth, supra, was decided in 1919. At that time there was no Virginia statute regulating the transportation of liquor through Virginia in interstate commerce. The determination of the two subsequent cases was based upon our conception of the construction then placed by the Supreme Court of the United States upon the Constitution of the United States and the Acts of Congress relating to interstate commerce then effective.

In recent years, the Supreme Court of the United States has greatly broadened its views as to the permissible extent to which the several States may regulate and control the transportation of liquor in interstate commerce. This extension is based, with reason, we think, upon the attendant dangers to the communities from the unregulated transportation of such beverages into, within or through the local communities, and upon the spirit and letter of the Twenty-first Amendment to the Constitution of the United States.

Where reasonable regulations affecting the interstate transportation of liquor are in the interest of the safety, health and well-being of local communities and merely give added assurance that the liquor will be transported without diversion or unlawful distribution within the States, the Supreme Court now holds that a State may enact effective statutes and measures under its police power to accomplish the desired end.

In Ziffrin *v.* Reeves, 308 U. S. 132, 84 L. Ed. 128, decided November 13, 1939, the Court upheld a regulation of the Kentucky Alcoholic Beverage Control Law restricting the

transportation of liquor to a common carrier, such as a railroad or express company, authorized by proper certificate from the Division of Motor Transportation in the Department of Business Regulations. Ziffrin had permission under the Federal Motor Carrier Act, 1935, (Title 49 U. S. C. A., section 301, et seq.) to operate as a common carrier, but was denied a certificate to transport liquor in interstate commerce, although he had previously thereto continuously received whiskey from distillers in Kentucky for direct carriage to consignees in Illinois.

Mr. Justice McReynolds, in upholding the right of Kentucky to enact the regulation, although it imposed some burden upon interstate commerce, said: "The Twenty-first Amendment sanctions the right of a state to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause. Without doubt a state may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained, or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them." (Citing cases.)

He further said that the regulation was within the police power of the state and that whiskey removed from permitted channels was contraband and subject to immediate seizure and not to be regarded as a proper article of commerce.

In Duckworth *v.* State of Arkansas, 314 U. S. 390, 86 L. Ed. 294, 138 A. L. R. 1144, decided December 15, 1941, the Court upheld a provision of an Arkansas statute, requiring a permit to be obtained for the transportation of intoxicating liquor within the boundary of that State, as a local police regulation permissible under the commerce clause of the Federal Constitution. The Arkansas statute made it unlawful for any person to ship into the State any distilled ardent spirits without first having obtained a permit from the State Commissioner of Revenue under rules and regulations promulgated by the Commissioner. Duckworth

was arrested in Arkansas while engaged in transporting, without a permit, a load of liquor from a point in Illinois through Arkansas to a point in Mississippi. At the time of his offense, there were no regulations regulating transportation of liquor through Arkansas, the regulations then in force being adapted to transportation and delivery within the State. The appellant admitted that the intoxicating liquor was intended to be transported into Mississippi for illegal use there; but the majority of the Court did not take that into consideration.

The issue in the above case involved transportation alone, there being no question of sale or use within the State of Arkansas. Mr. Chief Justice Stone, in referring to other cases where local restrictions had been deemd a burden upon interstate commerce, there said: "The present scheme of regulation is narrower in operation and has a less restrictive effect upon the commerce. It does not forbid the traffic in liquor, nor does it impede it more than is reasonably necessary to inform the local authorities who is to effect the transportation through the State, and to afford opportunity for them to police it."

We quote further from his opinion because of its bearing upon the instant case:

"While the commerce clause has been interpreted as reserving to Congress the power to regulate interstate commerce in matters of national importance, that has never been deemed to exclude the states from regulating matters primarily of local concern with respect to which Congress has not exercised its power, even though the regulation has some effect on interstate commerce, as we had occasion to point out at the last term of Court, there are many matters which are appropriate subjects of regulation in the interest of the safety, health and well-being of local communities which, because of their local character and their number and diversity and because of the practical difficulties involved, may never be adequately dealt with by Congress. Because of their local character also there is wide scope for local regulation, without impairing the uniformity of con-

trol over the commerce in matters of national concern and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the commerce clause. Such regulations, in the absence of supervening Congressional action, have for the most part been sustained by this Court, notwithstanding the commerce clause."

These later decisions of the Supreme Court have the effect of overruling our conclusions in the cases of *Williams* v. *Commonwealth, supra,* and *Surles* v. *Commonwealth, supra.*

We are bound by the judicial construction placed upon the provisions of the Federal Constitution by the Supreme Court of the United States. It is the final authority on that subject.

"It is a fundamental principle of the constitutional system of government of the United States that the decisions of the Federal Supreme Court are final and authoritative declarations as to the proper and correct construtcion to be placed on the Constitution and laws of the United States, and as to whether a state law contravenes any provisions of the Federal Constitution. On this principle, the construction given by that court to the Constitution and laws of the United States is received by all as the true construction • • •." 11 Am. Jur., Constitiuonal Law, section 104 and cases cited; 6 R. C. L. Constitutional Law, section 82.

We conclude that section 44 (c) of the regulations of the A. B. C. Board is a reasonable requirement to accomplish the purposes and objects of the Virginia Alcoholic Beverage Control Act. It affords no just ground of complaint to a lawful transporter, consignor, or consignee. It does not prevent or interfere with lawful interstate transportation. The execution and delivery of a bill of lading is a mere incident of business. It is not difficult to truthfully and lawfully state both the name of the consignor and consignee. As a matter of fact and of law, this is what should always be done. Section 44 (c) only requires that

to be done which is reasonable and necessary to protect the public's interest in preventing the unlawful distribution or use of whiskey within Virginia. Judicial relief may be asked for only when the regulations of the Board are unreasonable or arbitrary.

We find no error in the judgment and order of the trial court, and they are affirmed.

Affirmed.

(6940)